

(1)

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A. NO. 1908/2003

New Delhi, this the 26<sup>th</sup> day of April, 2004

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN  
HON'BLE SHRI S.A.SINGH, MEMBER (A)

Ganga Prasad  
F.S.O. (Retired)  
House No.46  
Village & Post, Badli  
Delhi. .... Applicant

(By Advocate: Shri R.R.Bharti)

Versus

1. Union of India through  
Secretary  
Government of India  
Ministry of Home Affairs  
Central Secretariat  
North Block  
New Delhi.
2. The Chief Secretary  
Government of National Capital Territory of Delhi  
New Delhi. .... Respondents

(By Advocate: Shri B.K.Barera for Respondent No.1  
and Shri Rishi Prakash for Respondent No.2)

O R D E R

Justice V.S. Aggarwal:-

Applicant (Ganga Prasad) by virtue of the present application, seeks to assail the order of 14.3.2003 issued in the name of the President whereby 25% of the monthly pension has been ordered to be cut for a period of five years. He further seeks to release of all retiral benefits including gratuity, arrears of pay and allowances with interest.

2. Some of the relevant facts are that applicant was served with the following statement of articles of charge:

"That the said Shri Ganga Prasad, Grade-I Officer of DASS while functioning as Food & Supply Officer in Circle No.20

*Ag*

of the Food & Supplies Department during the year 1996 committed gross misconduct in as much as he colluded with Shri S.P.Goel, Circle Inspector (F&S) and with malafide intention gave him approval to the issuance of 3 (three) Food Cards on post verification in total disregard of the Departmental instructions as well as the provision of the Delhi Specified Food Articles Order, 1981, which subsequently proved to be bogus as these Food Cards were not only issued on the non existant addresses but also to the fictitious persons under the assumed names of Shankar Dayal Sharma, Satish Chandra and Mohd. Foddar.

Thus the said Shri Ganga Prasad failed to maintain absolute integrity, devotion to duty and conducted himself in a manner unbecoming of a Govt. servant thereby violating the provisions of rule 3 of the CCS (Conduct) Rules, 1964."

3. Departmental proceedings had been initiated. The inquiry report had been submitted but the disciplinary authority recorded a note of disagreement with the findings of the inquiry officer which was made available to the applicant. Thereupon, after considering the reply, the following penalty order, which is the impugned order, had been passed:

"Whereas the case was examined by the President who came to the tentative conclusion that there were apparently good and sufficient reasons for imposition of a suitable cut in the monthly pension payable to the said Shri Ganga Prasad on the basis of the advice of the Central Vigilance Commission.

Whereas the case along with the relevant records was referred to the Union Public Service Commission for their advice. The Commission vide their letter No.F.3/171/2002-SI dated 27.1.2003 advised that the ends of justice would be met in this case if a penalty of 25% cut in the monthly pension, otherwise admissible, for a period of five years be imposed on Shri Ganga Prasad and the entire gratuity, admissible to him, if not required in any other case, may be released. A copy of the Union Public Service Commission's letter No.F/171/2002-SI dated 27.1.2003 is enclosed.

*Ms Ag*

And whereas, the President has considered the case in its entirety with reference to the report of the Inquiry Officer, the evidence of record, the representation submitted by the said Shri Ganga Prasad, comments of the Disciplinary Authority on the said representation, advice of the Union Public Service Commission and the relevant records and has come to the conclusion that Shri Ganga Prasad while functioning as F&SO in circle No.20 of the Food and Supply Department directed his Inspector Shri S.P.Goel to issue three Food Cards on post verification basis in total disregard of the Departmental Instructions. The said food cards were subsequently proved to be bogus as these cards were not only issued on the non-existent addresses but also to be fictitious persons under the assumed names of S/Shri Shanker Dayal Sharma, Satish Chandra and Mohd. Fodder. The omission/commission on the part of Shri Ganga Prasad as Food and Supply Officer, was therefore found in total disregard of the Departmental Instructions and the original complaint of alleged demand of illegal gratification from the Charged Officer, Inspector and other junior officers of circle 20 have been proved to be correct.

NOW, THEREFORE, the President in view of his above findings and after taking into consideration all the facts and circumstances of the case order that 25% of the monthly pension payable to the said Shri Ganga Prasad be cut for a period of five years. It is further ordered that the entire amount of gratuity admissible to him shall be released, if not required in any other case."

4. The said order is being assailed on various grounds. Needless to state that in the reply filed, the application is being contested.

5. During the course of the submissions, learned counsel for the applicant had drawn our attention towards the order passed by a Bench of this Tribunal in the case of S.P.GOEL v. GOVT. OF N.C.T. OF DELHI & OTHERS, O.A. No.1751/2001 decided on 29th

18 Aug

April, 2002. The proceedings therein had been quashed. It was not in dispute that the said Shri S.P.Goel faced the departmental proceedings ~~with~~ with the applicant. In the case of S.P.Goel (supra), this Tribunal recorded that no orders seems to have been issued for holding common proceedings as required in terms of Rule 18 of the CCS (CCA) Rules, 1965 and this Tribunal negatived the plea of the respondents that it was not mandatory to do so.

6. In normal circumstances, we would have adopted the same reasoning but during the course of the submissions, the learned counsel for the respondents had drawn our attention towards the order that has been passed on the file permitting common departmental proceedings to be initiated against the applicant and Shri S.P.Goel. During the proceedings, no objection has also seemingly been raised. Therefore, keeping in view this fact, the said observations made in the case of the co-delinquent cannot be used by the applicant to his advantage.

7. However, it was contended that the disciplinary authority relied upon the advice of the Central Vigilance Commission and Union Public Service Commission. Copies of the same had never been made available to the applicant, thus depriving him a reasonable opportunity to answer the same.

8. Our attention has been drawn towards the letter of the Central Vigilance Commission, dated 28.9.2000, issued to all the Central Vigilance

*MS Ag*

Officers/Ministries/ Departments of Government of India, etc. wherein the Commission even opined that their advice can be made available to the said delinquent. The same reads:

"5. Para 12.4.4 of Special Chapter on Vigilance Management in Public Sector Banks and para 22.6.4 of the Special Chapter on Vigilance Management in Public Sector Enterprises envisage that the inquiring authorities, including the CDIs borne on the strength of the Commission, would submit their reports to the disciplinary authority who would then forward the IO's reports, along with its own tentative views to the Commission for its second stage advice. The existing procedure in this regard may broadly continue. The disciplinary authority may, after examination of the inquiry report, communicate its tentative views to the Commission. The Commission would thereafter communicates its advice. This, alongwith the disciplinary authority's views, may be made available to the concerned employee. On receiving his representation, if any, the disciplinary authority may impose a penalty in accordance with the Commission's advice or if it feels that the employee's representation warrants consideration, forward the same, along-with the records of the case, to the Commission for its reconsideration."

9. This question had been considered by the Supreme Court in the case of STATE BANK OF INDIA AND OTHERS v. D.C.AGGARWAL AND ANOTHER, 1993 SCC (L&S) 109. A similar question had cropped up and the plea raised by the respondents that they were not required to give the advice of the Central Vigilance Commission was negatived holding:

"5. .... It was urged that copy of the inquiry report having been supplied to the respondent the rule was complied with and the High Court committed an error in coming to conclusion that principle of natural justice was violated. Learned Additional Solicitor General urged that the principle of natural justice having been incorporated and the same having been

*MS Ag*

observed the Court was not justified in misinterpreting the rule. The learned counsel urged that the Bank was very fair to the respondent and the disciplinary authority after application of mind and careful analysis of the material on record on its own evaluation, uninfluenced by the CVC recommendation passed the order. It was emphasised that if the exercise would have been mechanical the disciplinary authority would not have disagreed with CVC recommendations on punishment. Learned counsel submitted that, in any case, the disciplinary authority having passed detailed order discussing every material on record and the respondent having filed appeal there was no prejudice caused to him. None of these submissions are of any help. The order is vitiated not because of mechanical exercise of powers or for non-supply of the inquiry report but for relying and acting on material which was not only irrelevant but could not have been looked into. Purpose of supplying document is to contest its veracity or give explanation. Effect of non-supply of the report of Inquiry Officer before imposition of punishment need not be gone into nor it is necessary to consider validity of sub-rule (5). But non-supply of CVC recommendation which was prepared behind the back of respondent without his participation, and one does not know on what material which was not only sent to the disciplinary authority but was examined and relied on, was certainly violative of procedural safeguard and contrary to fair and just inquiry. From the letter produced by the respondent, the authenticity of which has been verified by the learned Additional Solicitor General, it appears the Bank turned down the request of the respondent for a copy of CVC recommendation as "The correspondence with the Central Vigilance Commission is a privileged communication and cannot be forwarded as the order passed by the appointing authority deals with the recommendation of the CVC which is considered sufficient". Taking action against an employee on confidential document which is the foundation of order exhibits complete misapprehension about the procedure that is required to be followed by the disciplinary authority. May be that the disciplinary authority has recorded its own findings and it may be coincidental that reasoning and basis of returning the finding of guilt are same as in the CVC report but it being a material obtained behind back of the respondent without his knowledge or supplying of any copy to him the High

18 Ag

Court in our opinion did not commit any error in quashing the order. Non-supply of the Vigilance report was one of the grounds taken in appeal. But that was so because the respondent prior to service of the order passed by the disciplinary authority did not have any occasion to know that CVC had submitted some report against him. The submission of the learned Additional Solicitor General that CVC recommendations are confidential, copy of which, could not be supplied cannot be accepted. Recommendations of Vigilance prior to initiation of proceedings are different than CVC recommendation which was the basis of the order passed by the disciplinary authority."

10. Similarly in the case of **MANAGING DIRECTOR, ECIL, HYDERABAD AND OTHERS, v. B. KARUNAKAR AND OTHERS**, 1993 SCC (L&S) 1184, the Supreme Court held that the delinquent has a right to receive the copy of the inquiry officer's report. The findings read:

"29. Hence it has to be held that when the enquiry officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the enquiry officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges levelled against him. That right is a part of the employee's right to defend himself against the charges levelled against him. A denial of the enquiry officer's report before the disciplinary authority takes its decision on the charges, is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice."

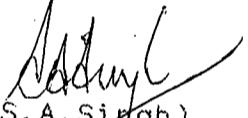
11. These principles are based on the premise that fair opportunity which is a reasonable opportunity, has to be granted to the delinquent. Facts should not be considered at the back of the delinquent. He may get chance to rebut and represent his version pertaining to the same. When the said

*Ch Ag*

reports which have been acted upon and opportunity was not granted to the applicant, he can well argue that prejudice is caused to him.

12. In the present case, neither of the two advices referred to had been communicated to the delinquent.

13. For these reasons, on this count, without delving into other controversies, we allow the present application and quash the impugned order. It is directed that the disciplinary authority, if deemed proper, taking note of the totality of the facts, may in accordance with law proceed from the stage the inquiry report was received.

  
(S.A. Singh)  
Member (A)

  
(V.S. Aggarwal)  
Chairman

/NSN/