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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. No.3019/2003

This the 16th day of July, 2004

HON'BLE SHRI V.K. MAJOTRA, VICE-CHAIRMAN (A)

HON'BLE SHRI SHANKER RAJU, MEMBER (J)

Girish Trivedi S/O C.M.P.Trivedi,
Sr. Scientific Officer-I,
Directorate of Quality Assurance (Stores),
Department of Defence Production,
Ministry of Defence, (DGQA) 'G' Block,
New Delhi. Applicant

(By Shri K.C.Pandey with Shri Gyan Prakash, Advocates)

-Versus-

1. Union of India through
Secretary (DP&S),
Dept. of Defence Production & Supplies,
Ministry of Defence,
South Block, New Delhi.
2. Director General of Quality Assurance,
Dept. of Defence Production & Supplies,
Ministry of Defence, South Block,
New Delhi.
3. The Director Quality Assurance (Stores),
Dept. of Defence Production,
Ministry of Defence (DGQA),
'G' Block, New Delhi. Respondents

(By Ms. Rinchen O. Bhutia, Advocate)

ORDER (ORAL)

Hon'ble Shri V.K. Majotra, Vice-Chairman (A)

Vide Annexure A-3 dated 14.10.1998, disciplinary proceedings were instituted against the applicant under rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. The following allegations were made against him :

"Shri Girish Trivedi, SSO-I, CQA(T&C), Kanpur while working in SQAE(GS) New Delhi recommended approval of the advance sample of Almirah collapsible Medium MK-II ex M/s. Swaraj Enterprises, New Delhi without complete

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paper particulars of the store and without bringing on record, the fact that the advance sample as well as the delivery No.622 was in painted condition against the contractual condition of being french polished and also issued Bulk Production clearance.

By his above acts, Shri Trivedi has failed to maintain absolute integrity and thereby contravened Rule 3(1)(i) of CCS (Conduct) Rules, 1964."

2. It has been stated on behalf of the applicant that while the enquiring authority has held the applicant not guilty of the charge, the disciplinary authority not agreeing with the findings of the enquiring authority, issued a dissenting note to the applicant without recording its reasons for such disagreement and proceeded to impose a penalty of reduction in basic pay by two stages in the time scale of pay of Rs.10000-325-15200 for three years with further direction that applicant would not earn increment of pay during the period of reduction and the reduction would have the effect of postponing his future increments of pay. On applicant's review petitions dated 8.4.2002 and 23.1.2003, vide Annexure A-2 dated 11.9.2003 the penalty was reduced to that of reduction in basic pay by one stage for one year with further direction that he would not earn increment of pay during the period of reduction and the reduction would have the effect of postponing his future increments of pay. The learned counsel further stated that while the disciplinary authority consulted the Central Vigilance Commission (CVC), it did not supply the advice of the CVC to the applicant which is in violation of Government of India, CVC circular No.99/VGL/66 dated 28.9.2000 and the settled law in terms of Hon'ble Supreme Court's decision

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in State Bank of India v. D.C.Agrawal, 1993 (1) SCC 13. Applicant has sought quashing of penalty orders dated 4.2.2002 (Annexure A-1) and dated 11.9.2003 (Annexure A-2) with direction to the respondents to grant all consequential benefits to the applicant.

3. In their counter reply in response to applicant's averment contained in paragraph 5.1 of the OA to the effect that applicant had not been provided copy of advice of the CVC, respondents have stated that advice of the CVC is a confidential document which is primarily meant for the disciplinary authority and there is no binding provision in the rules for providing a copy of the CVC's advice to the delinquent. No doubt, Para 3.6 (iii), Chapter XI and Para 8.6 Chapter XII of the Vigilance Manual, Vol.I provide that the CVC is of a confidential nature meant to assist the disciplinary authority, but it is observed that these instructions have been modified vide Government of India, CVC circular No.99/VGL/66 dated 28.9.2000 to the following effect:

"5.The Disciplinary Authority may, after examination of the inquiry report, communicate its tentative views to the Commission. The Commission would thereafter communicate its advice. This, along with 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.

6. Thus, if on the receipt of the employee's representation, the concerned Administrative Authority proposes to accept the CVC's advice, it may issue the orders accordingly. But if the Administrative Authority comes to the conclusion that the

representation of the concerned employee necessitates reconsideration of the Commission's advice, the matter would be referred to the Commission."

Obviously, respondents have followed the old procedure and not adopted the procedure in relation to consideration of advice of the CVC in terms of aforesaid circular dated 28.9.2000. The disciplinary authority has to supply CVC's recommendations along with the enquiry report to the delinquent to provide him an opportunity to represent thereagainst. In the case of **D.C.Agrawal** (supra) it was held that the disciplinary authority while imposing punishment, major or minor, cannot act on material which is neither supplied nor shown to the delinquent. Imposition of punishment on an employee, on material which is not only not supplied but also not disclosed to him, cannot be countenanced. Procedural fairness is as much essence of right and liberty as the substantive law itself. It was observed that non-supply of CVC's recommendations prepared behind the back of the delinquent without his participation, examined and relied on by the disciplinary authority, is certainly violative of procedural safeguards and contrary to fair and just enquiry. It was held that the submission that the CVC's recommendations are confidential and cannot be supplied to the delinquent is unacceptable. The ratio in the case of **D.C.Agrawal** (supra) is squarely applicable to the present case.

4. While we are not dwelling upon the other grounds taken up in the OA, the fact that the applicant had not been supplied a copy of the recommendations of

CVC and was not provided an opportunity to represent thereagainst, is good enough for holding the impugned penalty arbitrary, unlawful and without following the principles of natural justice.

5. In result, the OA succeeds. Annexures A-1 and A-2 are quashed and set aside and respondents are directed to accord consequential benefits to the applicant with immediate effect. No costs.

S. Raju

(Shanker Raju)
Member (J)

/as/

V. K. Majotra

(V. K. Majotra)
Vice Chairman (A)

16.7.04