Central Administrative Tribunal, Principal Bench

Original Application No.206 of 2003

New Delhi, this the 27th day of October, 2003

Hon'ble Mr.Justice V.S.Aggarwal, Chairman
Hon'ble Mr.S.A. Singh, Member(A)

1. Shri Surender Gupta (1683/E),
S/o Shri Ram Nivas Gupta,
R/o 107/9, Krishan Garh,
Vasant Kunj, New Delhi

2. Shri Abdul Hussain (1610/E)
S/o Shri Kamrooddin,
R/o Village Huchpuri, Distt. Faridabad,
Haryana .... Applicants

(By Advocate: Shri Ashwani Bhardwaj)

Versus

1. Commissioner of Police,
(New Delhi Range),
Police Headquarter, IP Estate,
New Delhi

2. Joint Commissioner of Police,
(New Delhi Range),
Police Headquarter, IP Estate,
New Delhi

3. Dy.Commissioner of Police,
East District,
Delhi .... Respondents

(By Advocate: Shri Ajesh Luthra)

O R D E R(ORAL)

By Justice V.S. Aggarwal, Chairman

Disciplinary proceedings had been initiated against the applicant. In pursuance of the same, enquiry officer had been appointed. He had exonerated the applicant. It is not in dispute that the disciplinary authority disagreed with the report of the enquiry officer. The note had been served and reply was called. After consideration of the same, the disciplinary authority imposed a penalty of stoppage of annual increment for a period of three years with cumulative effect. The

applicant's appeal was dismissed. He preferred O.A.351/2000. It was decided by this Tribunal on 10.4.2000. The operative part of the order passed by this Tribunal reads:

> "The departmental representative has produced the record of disciplinary proceedings. We have perused the same and we are satisfied that the disciplinary authority has not passed a speaking order while disagreeing with the findings of the enquiry officer and while holding the applicant guilty of the misconduct after applicant has been absolved of the charges by the enquiry officer. Similar is the position in regard to the order passed by the Appellate Authority. The same is also not a speaking order. The same does not give adequate reasons for arriving at the findings of the guilt against the applicant. Since both the aforesaid orders are non-speaking order, the same, namely, one passed by the disciplinary authority on 30.4.98 at Annexure-A and one passed by the appellate authority on 15.10.99 at Annexure-B are quashed and set aside and the matter is remitted back to the disciplinary authority who will proceed to pass a speaking order containing detailed reasons for his difference with the enquiry officer. A copy of the order to be passed, without saying, will be duly served on the applicant by the disciplinary authority to enable applicant to represent against the same before suitable orders are passed. Applicant will thereupon be entitled to prefer an appeal. The appellate authority again will dispose of the appeal by passing a detailed and reasoned order. The applicant, it goes without saying, will be once again entitled to approach this Tribunal in case he is not satisfied with the orders passed by the disciplinary authority and appellate authority."

2. After the order passed by this Tribunal, the disciplinary authority had passed a fresh order. Detailed reasons had been recorded and the same penalty of stoppage of annual increment for a period of three years with cumulative effect had been imposed. The applicant preferred an appeal and the order of the disciplinary authority had been modified. The penalty has now been reduced to stoppage of increment of pay for a period of

three years temporarily without cumulative effect.

By virtue of the present application, the applicant assails the said fresh orders that have been passed.

3. Learned counsel for the applicant advanced two pertinent arguments:

(a) the fresh note of disagreement had not been served; and

(b) even the note of disagreement which had earlier been served, was not a tentative note of disagreement but a final finding arrived at.

4. On both the counts, we find that the plea of the applicant, for purposes of the present application, must succeed.

5. As one peruses the order passed by this Tribunal, it is obvious that the order passed by the disciplinary authority had been quashed. He was directed to pass a fresh order containing detailed reasons for his disagreement with the enquiry officer. By necessary implication, it is obvious that the said note had to be communicated to the applicant. Otherwise also, as already pointed, the note of disagreement which had earlier been recorded was not a tentative note of disagreement. As per

the decision of the apex court in the case of **Yoginath D. Bagde v. State of Maharashtra & anr.**, JT 1999 (7) SC 62, the note of disagreement by the disciplinary authority has to be a tentative note of disagreement and not a final finding arrived at. It is not so in the present case.

6. Resultantly, on this short ground, we quash the impugned orders and remit the matter back to the disciplinary authority to pass a fresh order. By way of abundant caution, we make it clear that we are not touching any other aspect on the merits of the matter.

(S.A. Singh)
Member(A).

(V.S. Aggarwal)
Chairman.

/dkm/