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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 599/2020

KRISHAN KUMAR BOHRA @ K K BOHRA Petitioner

Through Mr. Rajinder Nischal & Mr. Asish
Nischal, Advocates.

versus

UNION OF INDIA AND ORS. Respondents

Through Mr. R.V. Sinha, Mr. Amit Sinha & Mr.
Vaibhav Pratap Singh, Advocates for R-1.
Mr. Rajeev Sharma with Mr. T. Rajat
Krishna, Advocates for R-2 & R-3.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

% **17.01.2020**

1. The present writ petition is directed against order dated 21.10.2019 passed by Central Administrative Tribunal ('Tribunal') by which an O.A. filed by the petitioner seeking quashing of charge memo has been rejected.
2. Mr. Rajinder Nischal, learned counsel for the petitioner submits that as per the preliminary inquiry report, no case is made-out against the petitioner. He relies on an office-noting dated 14.04.2018 filed at page 99 of the paper book, which we reproduce below :

"I have seen the Enquiry report. The Enquiry Officer has clearly said that the charges 1-5 are not proved. About charges the detailed note on page 9/11 has been seen. Since PE has clearly brought out that there is no fact in the charges, the case needs to be closed."

3. Mr. Nischal contends that this office-note was not produced before the Central Vigilance Commission ('CVC') and based on the advice of CVC, major penalty proceedings were initiated and thereafter, a charge memo was issued. Counsel further submits that the charge was issued just 7 days

before the superannuation of the petitioner. Moreover, the advice of CVC was not provided to the petitioner.

4. Counsels for respondents enter appearance on an advance copy.
5. We have heard learned counsels for the parties and have considered their rival submissions.
6. As far as submission of Mr. Nischal with regard to non-supply to the petitioner of the CVC's first stage advice is concerned, the Tribunal in concluding para of impugned order dated 21.10.2019 has directed that "*the respondents shall supply a copy of the first stage advice received by them from the CVC to the applicant within a period of 15 days from the date of receipt of a certified copy of this order*"; which takes care of this grievance.
7. Mr. Sinha, learned counsel for respondent No.1 in fact submits that a copy of advice received from CVC has already been provided to the petitioner.
8. As far as the plea of placing of office-noting dated 14.04.2018 before CVC is concerned, we are of the view that in fact there was no requirement of placing such office-noting before the CVC nor was this desirable, since the CVC, being an independent body, is competent to, and should, take a view unaffected by any observations made by the department.
9. Insofar as the contents of the file-noting are concerned, in the case of ***Shanti Sports Club v Union of India***, 2009 (15) SCC 705, the Supreme Court has held as under :

"A noting recorded in the file is merely a noting simpliciter and nothing more. It merely represents expression of opinion by the particular individual. By no stretch of imagination, such noting can be treated as a decision of the Government. Even if the competent authority records its opinion in the file on the merits of the matter under consideration, the same cannot be termed as a decision of the Government, unless it is sanctified and acted upon by issuing an order in accordance with Articles 77(1) and (2)

or culminated into an order affecting right of the parties only when it is expressed in the name of the President or the Governor, as the case may be, and authenticated in the manner provided in Article 77(2) or Article 166(2). A noting or even a decision recorded in the file can always be reviewed/reversed/overruled or overturned and the court cannot take cognizance of the earlier noting or decision for exercise of the power of judicial review.”

10. Furthermore, in ***Sethi Auto Service Station v. DDA***, (2009) 1 SCC 180, the Supreme Court has observed as under:

"It is trite to state that notings in a departmental file do not have the sanction of law to be an effective order. A noting by an officer is an expression of his viewpoint on the subject. It is no more than an opinion by an officer for internal use and consideration of the other officials of the department and for the benefit of the final decision-making authority. Needless to add that internal notings are not meant for outside exposure. Notings in the file culminate into an executable order, affecting the rights of the parties, only when it reaches the final decision-making authority in the department, gets his approval and the final order is communicated to the person concerned."

11. In view of the above, we find no ground to entertain this writ petition. The same is accordingly dismissed.

CM APPLs. 1637-1638/2020

12. In view of order passed in the writ petition, the applications also stand dismissed.

G.S.SISTANI, J

ANUP JAIRAM BHAMBHANI, J

JANUARY 17, 2020/ck /

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