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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH.**

268 (27)

OA No. 282/2002

New Delhi, this the 12th day of March, 2007

HON'BLE SH. L.K.JOSHI, VICE CHAIRMAN (A)
HON'BLE SH. SHANKER RAJU, MEMBER (J)

I.S. Rajpurohit,
S/o Shri Vijai Singh Rajpurohit,
R/o B-57, Suraj Vihar,
Opp. Sub Gate NSIT,
Kakrola More,
New Delhi-59. -Applicant

(Applicant in person)

-Versus-

1. Director General & Secretary,
Indian Council of Agril. Research,
(Ministry of Agriculture)
Krishi Bhawan,
New Delhi-1 & Others -Respondents

(By Advocate Mrs. Nidhi Bisaria)

1. To be referred to the Reporters or not? Yes

2. To be circulated to other Benches of the Tribunal or not? Yes

S. Raju
(Shanker Raju)
Member (J)

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 (Ministry of Agriculture)
 Krishi Bhawan,
 New Delhi-1.
2. Shri Ajit Singh,
 Agriculture Minister & President
 Indian Council of Agril. Research
 (Ministry of Agriculture),
 Krishi Bhawan,
 New Delhi-1.
3. Director,
 Indian Agril. Research Institute,
 Pusa, New Delhi-12.
4. Dr. J.S. Panwar, IO & Scientist,
 Division of Agril. Engineering,
 Indian Agril. Research Institute,
 Pusa, New Delhi-12.
5. Shri G.C. Sharma,
 Ex. Joint Director (Admn)/C.Ado (OMV)
 Through Director IARI,
 Pusa, New Delhi-12.
6. I.J.S.C. Staff Association,
 through Director, I.A.R.I.
 New Delhi.

-Respondents

(By Advocate Mrs. Nidhi Bisaria)

O R D E R

Mr. Shanker Raju, Hon'ble Member (J):

By virtue of the present OA applicant, an ex-Superintendent, has assailed a penalty of compulsory retirement following the disciplinary proceedings inflicted by an order dated 20.10.2000 as well as an order passed in appeal on 28.12.2001, whereby on reinstatement penalty has been reduced to reversion to the post of Junior Stenographer.

2. While posted as Superintendent applicant who was transferred vide order dated 1.5.1998 when had not reported for duty to the transferred place was dealt with in a major penalty proceedings under Rule 14 of the CCS (CCA) Rules, 1965 for remaining absent from 13.5.1998 to 19.2.1999 and also not complying with the relieving order dated 8.5.1998. The enquiry officer (EO) though established the charge on an exparte enquiry of absent from duty but has not established the charge pertaining to acceptance of communication of relieving in the peon book but held him guilty of refusing to accept the communication from CTO, which is a different charge admitted by him. On representation a penalty of compulsory retirement when reduced in appeal, led to filing of the present OA.

3. By an order passed on 14.1.2003 a coordinate Bench of this Tribunal rejected the OA as bereft of merit. Writ Petition

No.8019/2003 preferred before the High Court of Delhi was allowed on 27.3.2006 on the ground that plea of petitioner therein was not dealt with and rejected without sufficient reasoning. As a result thereof, the order of the Tribunal was set aside on remand back of the matter to the Tribunal to deal with the plea of applicant afresh in an appropriate manner.

4. Applicant, who appeared in person, took several pleas to assail the orders. One of the pleas was that though he was not held guilty of charge No. II, yet on a different charge he has been punished, which is on an extraneous charge, without affording him a reasonable opportunity to either rebut or defend the charge. It is also stated that in a way the disciplinary authority (DA) disagreed with the findings of the EO by holding that the charge is established whereas it is partly proved, which has not preceded a tentative disagreement and a reasonable opportunity in consonance with the principles of natural justice, which deprived applicant a reasonable opportunity to defend.

5. Applicant has also stated that whereas compulsory retirement, when assailed in appeal and as no orders have been issued by respondents, led to filing of OA-2295/2000, which on 24.9.2001 was disposed of, with a direction to appellate authority to pass a speaking order, treating the contents of the contentions raised by applicant, yet the order passed by the appellate authority is a non-speaking order

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passed without dealing with the contentions of applicant, which is not tenable, as per the OM of DoP&T dated 5.11.1985.

6. On the other hand, respondents' counsel has vehemently opposed the contentions and stated that during the pendency of the OA, on a review filed by applicant the reviewing authority, on a show cause notice issued to applicant enhanced the punishment from reduction to compulsory retirement, by an order passed on 5.1.2004, which is not assailed in the present OA. The contentions put forth by applicant are vehemently opposed by stating that the appellate order is reasoned and there is no disagreement arrived at by the DA.

7. We have carefully considered the rival contentions of the parties and perused the material on record.

8. The OA filed by applicant in 2002 though dismissed but the order of the Tribunal was set aside and the matter was remanded back for fresh consideration. This has given continuity of the proceedings before the Tribunal insofar as present OA is concerned. The review filed by applicant during the pendency of the OA and the order passed by respondents in review, enhancing the punishment and restoring the penalty of compulsory retirement from reversion, is hit by Section 19 (4) of the Administrative Tribunals Act, 1985, where once the application is admitted by the Tribunal, every

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proceedings under the relevant service rules as to redressal of grievance, which, *inter alia*, includes review, shall not be entertained and any order passed would be nullity in law. Accordingly, being an order passed after admission of the OA by the reviewing authority, enhancing the punishment to compulsory retirement on 5.1.2004 is without jurisdiction and nullity in law. There is no legal requirement under the Act to challenge the same. Accordingly, this objection stands overruled.

9. The EO insofar as Articles-I & II are concerned, recorded the following findings:

"From the foregoing, it is established that the CO remained absent from office, despite his relief from KVK dated 6.5.98, without prior approval/permission of the competent authority as he did not report for duty to the CF & AO, IARI, New Delhi till 19.2.1999. This was inspite of the instructions issued to him from time to time for joining duty by the SAO (P.II), IARI, New Delhi. With this act the CO caused loss of work of the Institute.

Shri Rajpurohit, by his above act, demonstrated lack of devotion to duty and acted in a manner which is unbecoming of a Council's employee. The contravention of the provision of Rule 3 (1) (ii & iii) of the CCS (Conduct Rules) 1964, as extended to the ICAR employees is proved.

Article II

The CO is charged for not receiving officer order No. KVK/PF/5-29/96-5 dated 8.5.1998 in compliance with SAO (P.II), IARI, New Delhi's officer order No. 7-40/90-P.II dated 1.5.98 with instructions to join his duty at the IARI through the peon book in the presence of CTO.

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The evidence on record does not include any witness or document indicating refusal of receiving the said communication through the peon book. **Neither the peon book nor the peon were produced by the PO to prove the allegation of refusal of the order through peon book.**

However, the only evidence on record of his (CO) refusal to accept an official communication is the statement of Dr. Hira Nan, CTO, KVK, Shikohpur, Gurgaon (Haryana), (**H7**), The **SW1** who was his controlling officer at the KVK, stated that "he came on 13.5.98 and he was called to my officer. I tried to deliver the letter to him in person which he again declined to receive. The letter in original was, therefore, sent to the JD(A) with refusal remarks on the body of the letter". **Considering the entire evidence of the case there is no reason to disbelieve this evidence of CTO, KVK, Shikohpur.**

There is nothing on record to show that the CO refused to accept the said communication **through the peon book**. However, the CO refused to accept the said communication from the CTO, KVK, who was his controlling officer. **This may be a finding on a charge different than is contained in the charge sheet, However, by his refusal to accept the official communication from the CTO, KVK, his controlling officer, Shri Rajpurohit (CO) acted in a manner which is unbecoming of a Council's employee and therefore, contravened provision of Rule 3(1) (iii) of the CCS (Conduct Rules) 1964 as extended to the ICAR employees.**

10. The DA on representation by applicant against the enquiry report, recorded as follows:

"Whereas the Inquiry Officer had submitted the Inquiry Report. Shri Rajpurohit did not appear before the Inquiry Officer despite issue of notices dt. 30.11.99, dt. 3.12.99 & 29.12.99 of the proceedings by the Inquiry Officer to appear/participate in the proceedings. Shri Rajpurohit thus, not cooperated with the Inquiry Officer though he was given ample opportunity as provided under the rules vide No. KVK/99/AE/3213/4 dt. 4.3.2000 and the entire proceedings had to be held "ex-parte" by the I.O. who in his report has held proved the charges levelled against Sh. Rajpurohit.

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Whereas a copy of Inquiry Officer's report was sent to Shri Rajpurohit vide this officer memo No.2-9/98-OMV/30100/Vol.I dt. 29.7.2000 with the advise to make representation or submission, if any, within 15 days of the receipt of the said memo, if he so wishes.

Now, therefore, having regard to the circumstances of the case and taking into account the Inquiry Officer's report and consideration of all the relevant facts and records, the Disciplinary Authority is of the opinion that good & sufficient reasons exist for imposing the penalty of "Compulsory Retirement" on Shri I.S. Rajpurohit, JAO, IARI.

Accordingly, in exercise of the powers conferred under CCS (CCA) Rules-1965, the undersigned in the capacity of Disciplinary Authority hereby imposes the penalty of "Compulsory Retirement" from service with immediate effect on the aforesaid Shri I.S. Rajpurohit, JAO and he will draw his compulsory retirement pension & gratuity equivalent to full compensation pension & gratuity as admissible to him."

11. If one has regard to the above, it is trite that when an article of charge is not substantiated on the basis of the evidence adduced on both sides in the enquiry, the EO has to either record a finding of guilt or not guilty. However, a strange procedure has been adopted where though the charge leveled has not been established, a charge, which is not leveled against applicant and outside the scope and ambit of the enquiry, has been established.

12. Insofar as this part of the charge is concerned, neither this charge has been leveled and confronted with applicant nor any reasonable opportunity to defend has been afforded to him. Accordingly, when the DA took cognizance of the



report of the EO, he has, without recording any tentative reasons, on disagreement held both the charges as proved, which is factually incorrect and imposed a major penalty upon applicant. In this regard, applicant who has been deprived of a reasonable opportunity to show cause against the action of the DA, which impliedly disagreed with the enquiry report, could not be properly defended, which, in turn, is an infraction to the principles of natural justice. Though the DA has a prerogative to disagree but not before adopting due procedure of law, as held by the Apex Court in ***Yoginath D. Bagde v. State of Maharashtra***, JT 1999 (7) SC 62.

13. Insofar as extraneous charge is concerned, it has been taken into consideration by the DA, which is impermissible in law, as held by the Apex Court in ***M.V. Bijlani v. Union of India***, 2006 (4) Scale 146.

14. The appellate order as well suffers from legal infirmity. The appellate authority has been directed in OA-2295/2000 as follows:

“Having regard to the aforesaid fact, we feel that the interests of justice will be duly met by disposing of the present OA with a direction to appellate authority to pass a reasoned and a speaking order on the appeal as expeditiously as possible and in any event within a period of two months from the date of service of a copy of this order. We direct accordingly. It goes without saying that the applicant will be at liberty to revive all the contentions which he has raised in the present OA in his appeal. The appellate

authority may also consider the present OA proceedings as a part of his appeal."

15. The appellate authority made the following consideration:

"WHEREAS the President, ICAR being the Appellate Authority in this case has considered his appeal and found that the points raised by Shri I.S. Rajpurohit in his appeal are not convincing enough to merit consideration. It is also observed that the disciplinary proceedings have been held as per laid down procedure by giving him the reasonable opportunity to defend his case. The Inquiry Officer in his report has held only one charge as proved and the second charge as not proved, which shows that the Inquiry Officer was unbiased, just and reasonable during the inquiry proceedings.

AND WHEREAS, the Appellate Authority is of the opinion that though he does not find any merit in the appeal made but keeping a humanitarian view, in partial modification to the punishment to Shri Rajpurohit, he is reverted back to the post of Junior Stenographer."

16. Having regard to the above, we do not find any cognizance taken by the appellate authority of the contentions raised by applicant not only in his appeal but also in the OA filed before the Tribunal. Accordingly, a non-speaking order, without dealing with the contentions of applicant has been passed, which is violative of DoP&T instructions *ibid* and also offends the dicta of the Apex Court in ***Director, Indian Oil Corporation v. Santosh Kumar***, 2006 (6) Scale 358.

17. In the result, for the foregoing reasons, as the OA succeeds on these two legal infirmities, all other grounds are

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not adjudicated upon. Impugned orders are set aside. Respondents are directed to reinstate the applicant in service forthwith. In such an event he would be entitled to all consequential benefits, including treatment of the intervening period from the date of dismissal to date of reinstatement as per FR. This shall be done within a period of two months from the date of receipt of a copy of this order. No costs.

S. Raju
(Shanker Raju)
Member (J)

L.K. Joshi
(L.K. Joshi)
Vice-Chairman (A)

'San.'