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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-2771/2002
MA-1628/2003

Date of Decision 29.4.04

Shri T. Sagar Applicant

(By Advocate Sh. Ashwani Bhardwaj)

versus

ICAR & Ors. Respondents

(By Advocate Sh. V.K. Rao with Sh. Satish Kumar)

CORAM:

Hon'ble Shri Shanker Raju, Member(J)
Hon'ble Shri S.A. Singh, Member(A)

1. To be referred to the reporter or not? Yes
2. Whether it needs to be circulated to other Benches of the Tribunal? Yes

S. Raju
(Shanker Raju)
Member(J)

(24)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI..

OA-2771/2002
MA-1628/2003

New Delhi this the 29th day of April, 2004.

Hon'ble Sh. Shanker Raju, Member(J)
Hon'ble Sh. S.A. Singh, Member(A)

Sh. T. Sagar,
S/o late Sh. Jagan Nath,
R/o A-4C/198 A, Janak Puri,
New Delhi-58. Applicant

(through Sh. Ashwani Bhardwaj, Advocate)

VERSUS

1. Indian Council of Agricultural Research
through its Director General,
Krishi Bhawan, New Delhi-1.
2. The Secretary,
Indian Council of Agricultural Research
(ICAR)
Krishi Bhawan,
New Delhi-1.
3. Sh. Vikram Singh,
Under Secretary (Admn.),
Indian Council of Agricultural Research
(ICAR)
Krishi Bhawan,
New Delhi-1.
4. Sh. N.C. Sudan,
Under Secretary(Vig.),
Indian Council of Agricultural Research
(ICAR)
Krishi Bhawan,
New Delhi-1.
5. Sh. J.K. Nath,
Under Secretary(Cash),
Indian Council of Agricultural Research
(ICAR)
Krishi Bhawan,
New Delhi-1. Respondents

(through Sh. V.K. Rao with Sh. Satish Kumar, Advocate)

O R D E R
Hon'ble Sh. Shanker Raju, Member(J)

Applicant impugns respondents order dated 5.12.1994 imposing upon him a penalty of removal from service, appellate order dated 14.6.1995 confirming the punishment and also order in revision dated 10.5.2002 confirming the punishment.

2. The factual matrix relevant for adjudication is reproduced as under:-

Applicant while functioning as Programme Officer (Impl.), Indian Council of Agricultural Research (ICAR for short) was served with a major penalty chargesheet on 15.6.1983 under Rule 14 of the CCS(CCA) Rules, 1965 alleging failure to account Rs. 5000/- out of Rs. 35000/- received from Sh. Rup Ram to meet the expenses to the non-official members attending a meeting held on 22.3.1980 by submitting a false adjustment account enclosing false and forged payment vouchers of 4 persons. On completion of the enquiry the punishment of removal was inflicted on 26.8.1985. A writ was filed against it and was transferred to the Tribunal as TA-118/87 by the Delhi High Court.

3. By an order dated 10.7.1992 by the Tribunal in TA-118/87, OA was partly allowed, removal order has been set aside, the enquiry has been ordered to proceed in accordance with rules with applicant under deemed suspension.

4. The aforesaid order was challenged by the applicant in CA-4363/94 before the Apex Court. By an order dated 9.5.1994 enquiry has been ordered to be completed within a period of 6 months with liberty to the respondents to pass an order with regard to the suspension of the applicant. In consequence thereof vide order dated 16.6.1994 applicant was allowed to join duties.

5. A memorandum under Rule 14 of the CCS(CCA) Rules was issued to the applicant on 24.3.1994 with the following imputations:-

"That Shri T. Sagar was functioning as Programme Officer (Impl.), ICAR, New Delhi during the period 1980-81. It was his duty to arrange meetings of ICAR, Rupees 35,000/- was sanctioned by the Secretary, ICAR in the name of Shri Rup Ram, Additional Secretary during the year 1980 to meet the expenses on TA/DA to the non-official members of ICAR Society. Shri Rup Ram received this amount on 21.3.1980 and handed over the same to Shri T. Sagar to disburse the amount on TA/DA to the non-official members who were to attend the meeting on 22.3.1980.

The meeting of the ICAR was held on 22.3.1980 at New Delhi and all the attending members put their initials/signatures in the Attendance Register which was kept in the meeting in token of having attended the said meeting. Shri T. Sagar obtained payment vouchers containing the signatures of the member who attended the meeting, filled up the body portion of all the payment vouchers, made the payments and retained such payment vouchers with himself and did not submit the adjustment account for more than a year inspite of several reminders made to him by Shri Rup Ram as well as by the department.

Shri T. Sagar submitted adjustment Account on 29.6.1981 enclosing 18 payment vouchers including the payment vouchers of those members who had either not attended the meeting or if attended had not received any payment. S/Shri P.N. Bhaduri, D.P. Motiramani and T.C.N. Singh had not attended the meeting on 22.3.1980 nor received any payment about the TA/DA payment vouchers in their names for adjustment of the account showing payment of Rs. 1200/- to Shri P.N. Bhaduri, Rs. 1000/- to Shri D.P. Motiramani, Rs. 2100/- to Shri T.C.N. Singh and Rs.700/- to Shri B.S. Pathak.

Shri T. Sagar got all the payment vouchers certified regarding actual payment from Shri Rup Ram after more than one year i.e. 29.6.1981 falsely representing him that he had actually made payments also to aforesaid four persons although no payments were made to them.

Shri T. Sagar thereby misappropriated Rs. 5000/- and failed to account for the same. He thereby failed to maintain absolute integrity devotion to duty."

6. By an order dated 10.8.1994 Director General ICAR has written off loss to the tune of Rs. 11,198/- due to the Council from Sh. Rup Ram towards outstanding amount of Rs. 35000/- taken by him for making payment of TA/DA to non-official members. Applicant on the basis of write off sent a representation to the Secretary, ICAR on 31.10.1994 placing reliance on an Annexure-7 under Rule 13(1) of the Delegation of Financial Powers Rules, 1978 contending that the amount of Rs. 11,198/- written off is inclusive of the amount of Rs. 5000/- allegedly misappropriated by the applicant and as condition precedent for writing off is when no negligence is found against the government servant, enquiry be set aside.

7. Under Secretary (Vig.) by a letter dated 11.11.1994 sought clarification from ICAR as to whether amount written off includes the amount attributed against the applicant. This has not been responded to.

8. After examination of witnesses, defence witnesses and submission of written statement of defence by the presenting officer as well as applicant, the enquiry officer held the applicant guilty of the charge.

9. The aforesaid finding was responded to by the applicant through his representation which culminated into a major penalty of removal. An appeal preferred against the punishment was set aside.

10. Applicant has also filed revision and as it is not responded, directions of Tribunal in OA-1353/2001 on 28.5.2001 culminated into a reasoned order passed in revision giving rise to the present OA. Applicant has prayed for the following reliefs:-

- (a) Quash the orders issued against the applicant, by the respondents, being order:-
 - (i) Order No. 1-11/92-Vig dated 5.12.94 passed by the Respondent No.2 (Copy annexed herewith as Annexure-A-1) imposing the penalty or removal from service, and
 - (ii) Order No. F.No. 1-11/92-Vig. dt. 14.06.95 passed by the Respondent No.1 on the appeal of the applicant

(Copy annexed herewith as ANNEXURE-A-2), and

(iii) Order No. F.No. 1-11/92-Vig. Dt. 10.5.2002 passed by Respondent No.1 (Copy annexed herewith as ANNEXURE-A-3), AND

(iv) Enquiry Report dt. 7.10.94 submitted by the I.O. (Copy annexed herewith as ANNEXURE-A-4).

(b) Direct the respondent Deptt. to first appoint the applicant as programme officer, in view of the orders of Hon'ble Supreme Court dt. 09.5.1994, instead of Assistant and to pay all the consequential benefits, of subsistence allowance arrears as per the Supreme Court order and thereafter salary and allowance after proper fixation of pay under the Rules, with arrears and interests thereon, and

(c) Direct the respondent Deptt. to grant the benefits to the applicant in terms of the order dated 9.5.94 passed by the Hon'ble Supreme Court and release his provident fund accumulations with interest throughout, and

(d) Direct the respondents to declare the applicant to have been re-instated into services with all consequential benefits of pay & seniority, by placing the applicant in a situation as if applicant was never dismissed from the service and to retire him with reference to his date of superannuation i.e. April 1997 with all normal & consequential benefits.

(e) Summon all the relevant records of the case, which clearly shows the mala fide of the respondents towards the applicant, and

(f) Pass any other or further order(s) relating to costs etc., which this Hon'ble Tribunal may deem fit, just & proper in the above-mentioned facts & circumstances."

11. Learned counsel of the applicant Sh. Ashwani Bhardwaj raised the following contentions to assail the impugned orders:-

(a) According to him after the decision of the Apex Court applicant should have been appointed as Programme Officer and the period of suspension should have been decided under FR 54 which has been done only after orders of Disciplinary Authority.

(b) As the amount of Rs.5000/- is inclusive in the written off amount against Sh. Rup Ram no serious negligence is found attributable to the applicant which does not warrant disciplinary proceeding and consequent orders are nullity in law.

(c) Applicant's request against appointment of Enquiry Officer and his allegations of bias have not been considered.

(d) From the evidence recorded including cross examination of the witnesses as admission has been made as to the payment of all 4 persons and as well as to Sh. B.S. Pathak, the present is a case of no evidence.

(e) The enquiry officer has not applied his mind to the material on record and passed a non-reasoned, abrupt finding contrary to the decision of Apex Court in Anil Kumar Vs. Presiding Officer

(AIR 1985 SC 1121) applicant has been deprived of reasonable opportunity as legal practitioner was not allowed to represent the applicant.

(f) Documents sought including bills and vouchers denied as well as CBI and CVC report as defence documents are also denied.

(g) Opportunity of cross examination of Sh. Rup Ram was denied.

(h) Handwriting expert has not been allowed to be examined in defence.

(i) Non-speaking order of Disciplinary Authority, Appellate Authority as well as Revisional Authority.

(j) Denial of personal hearing by DA & RA.

12. One of the contentions raised vehemently is relying upon Schedule-VII of Delegation of Financial Powers Rules, 1978.

13. In this conspectus it is stated that out of Rs. 35000/- disbursed to Sh. Rup Ram the amount of Rs. 5000/- is inclusive in it as the Director General, ICAR the competent authority has written of loss of Rs. 11198/- due to the Council

from Sh. Rup Ram which includes Rs. 5000/- of the applicant. This action has an effect of suo moto dropping of the disciplinary proceedings and no punishment can be imposed.

14. Learned counsel refers to Note Schedule-VII of the Delegation of Financial Powers Rules wherein the following has been provided:-

Note 1.- The powers specified in this Schedule may be exercised by a subordinate authority provided that-

- (a) the loss does not disclose a defect in rules or procedure, the amendment of which requires the orders of higher authority or Finance Ministry;
- (b) there has not been any serious negligence on the part of any Government servant which may call for disciplinary action by a higher authority.

Note 1.- Write-off losses of cash in treasuries, whether in the course of remittance or out of treasury balances, are governed by separate rules.

Note 3.- For the purpose of this Schedule the value of the stores shall be the "book value" where priced accounts are maintained and "replacement value" in other cases."

15. According to the above, the sine qua non for an exercise to write off losses is when no serious negligence on part of any government servant is found which may call for disciplinary action by higher authority. As the amount of Rs. 5000/- is

inclusive which has not been established otherwise by the respondents. Disciplinary proceedings as well as consequent orders are liable to be set aside as no serious negligence has been found.

16. On the other hand, respondents' counsel on this issue represented through Sh. V.K. Rao contested that the write off does not hold good for applicant as this is in case of Sh. Rup Ram, would not amount of condonation of charges and misconduct against the applicant.

17. The write off is only with a view to settle the losses in view of the audit objection and to make the accounts clear. It is vehemently denied that Rs. 5000/- is inclusive in the write off losses. In the rejoinder to this issue learned counsel of the applicant vehemently denied it.

18. We on careful consideration of rival contentions on the issue of write off the losses, find that the Revisioning Authority in its order dated 10.05.2002 has recorded the following findings:-

"The Director General, being the Appellate Authority has considered these points when note dated 1.6.95 was submitted to him for consideration of appeal of Shri T. Sagar and he has passed orders on 6.6.95.

Bye Law 30(a) of ICAR Rules & Bye Laws says that except in regard to matters for which specific provision has been made in the Rules, Bye Laws, Regulations or Orders made or issued by

the Society, the Service and Financial Rules framed by the Government of India from time to time shall apply mutatis mutandis to the employees of the Society in regard to matters concerning their service conditions.

Under Bye Law 11 of the ICAR Rules & Bye Laws specific provision has been made by giving power to the Director General, ICAR to write off losses in respect of the Society to the extent it is being exercised by a Ministry/Department of Govt. of India.

Therefore, power of DG, ICAR to write off losses flows from Bye Law 11 and not under Rule 13 of the Delegation of Financial Powers Rules, 1978. The Contention of Shri T.Sagar, therefore, is not correct."

19. It appears that the stand taken by the respondents is that if a power is conferred under Bye Laws of ICAR the write off losses emanates under Bye Law but not under Rule 13 of the Delegation of Financial Powers Rules, 1978.

20. It is not in dispute that ICAR is notified under Section 14 of the Administrative Tribunals Act, 1985 and the employees of ICAR are holders of civil posts. It is also not disputed that all the rules framed by the Government of India shall mutatis mutandis applies to the officers and employees of ICAR.

21. As per General Financial Rules, 1963, Rule 21 fixes responsibility for losses and Ministry

of Finance D.O. dated 12.1.1953 regulates the follow up which is reproduced as under:-

(i) Prompt action against delinquents and devising remedial measures against defects noticed. Attention is invited to the Report of the Public Accounts Committee on the Appropriation Accounts for the year 1948-49 wherein they have made the following recommendation at para 20:-

1. Ministries should ensure that action against the delinquent officials is taken promptly and the Ministry of Finance should see that the Ministries initiate necessary proceedings in each and every case in time. Remedial measures should also be devised against any defects that may have come to notice of that Ministry in the course of investigations.

2. A number of cases have gone up before the Committee in which it was stated that action could not be taken against the delinquent officials because of the delay in making necessary enquiries in the matter and by the time their guilt was established they had either retired, died or left the country. The Public Accounts Committee have, therefore, been extremely critical of the inadequacy of administrative action, particularly as clear procedural instructions exist enjoining on every Government officer to realise fully and clearly that he will be held responsible for any loss sustained by Government through fraud or negligence on his part and that he will also be held personally responsible for any loss arising from fraud or negligence on the part of any other Government officer to the extent to which it may be shown that he contributed to the loss by his own action or negligence.

3. The importance of avoiding delay in the investigation of any loss of Government money due to fraud, negligence, financial irregularity, etc., is, therefore, emphasised. Such case should be reported immediately to their Audit Officer concerned so that his assistance can also be obtained in regard to the technical investigation of

any cases of losses. The Administrative Ministry and the Ministry of Finance should also be informed at the earliest moment so that effective remedial action may be taken in rectifying defective procedure, etc., quite apart from the punitive action against those at fault. In any case in which it appears that recourse to judicial proceedings is likely to be involved, competent legal advice should be taken as soon as the possibility emerges. In all cases departmental proceedings should also be instituted at the earliest possible moment and concluded expeditiously in strict accordance with the prescribed rules. The question of enforcing pecuniary liability should always be considered as well as the question of other forms of disciplinary action. In particular, if the loss has occurred through fraud, every endeavour should be made to recover the whole amount lost from the guilty persons, and if laxity of supervision has facilitated the fraud, the supervising officer at fault should be penalised either directly by requiring him to make good in money an adequate proportion of the loss, or indirectly by reduction or stoppage of his increments of pay. Steps should also be taken to ensure that a Government servant is concerned in any loss or irregularity which is subject to any enquiry is not inadvertently allowed to retire on pension while the enquiry is in progress and accordingly when a pensionable Government servant is concerned in any irregularity or loss the authority investigating the case should immediately inform the Audit Officer responsible for reporting on his title to pension and the authority competent to sanction pension. In all important cases which might figure in the Audit Report if a convention should be followed of consulting the Finance Ministry also before awarding punishment to the delinquent officer some of the criticisms of the Public Accounts Committee about the inadequacy of departmental action may be obviated.

4. Even under Rule 49 of the Central Civil Service (Classification, Control and Appeal) Rules one of the penalties which may be imposed upon a Government servant is the recovery from pay of the whole or part of any pecuniary loss caused to Government by negligence or breach of orders.

5. As will be realised, suitable action against the delinquent officials can only be taken if the matter is pursued promptly. I, therefore, request that you will kindly take suitable steps to ensure that action against the delinquent officials is taken promptly and that Audit and the Ministry of Finance are brought into the picture without any delay."

22. Rule 13 of the Delegation of Financial Power Rules, 1978 provides as under:-

"13. Powers of subordinate authorities

(1) Subject to the provisions of these rules, the Departments of the Central Government, Administrators and Heads of Department shall, in relation to creation of permanent posts, creation of temporary posts, Appropriation of Reappropriation, incurring of contingent expenditure, incurring of miscellaneous expenditure, and write off of losses, have the powers respectively specified in Schedules II, III, IV, V, VI and VII.

(2) A Department of Central Government may, by general or special order, confer powers, not exceeding those vested in that Department, upon an Administrator or Head of Department or any other subordinate authority in respect of any matter covered by these rules:

Provided that no power under this sub-rule shall be redelegated in respect of-

- (a) creation of posts;
- (b) write off of losses; and
- (c) reappropriation of funds exceeding 10 per cent of the original budget provision for either of the primary units of appropriation of sub-head, i.e., the primary unit or sub-head from which the funds are being reappropriated or the primary unit or sub-head to which the funds are to be reappropriated, whichever is less.

(3) The Administrator or Head of a Department referred to in sub-rule(2)

may, by an order in writing, authorise a Gazetted Officer serving under him to exercise to such extent, as may be specified in that order, all or any of the powers conferred on such Administrator or Head of Department under sub-rule (1) or sub-rule (2). The Administrator or Head of a Department shall, however, continue to be responsible for the correctness, regularity and propriety of the decisions taken by the Gazetted Officer so authorised.

(4) An authority empowered by or under these rules to incur contingent expenditure or miscellaneous expenditure shall exercise such powers subject to the following conditions, namely:-

- (a) In regard to the supply of articles required for the public service and for regulating the purchase of stationary stores for the public service, the provisions contained in Appendix 8 and Appendix 9 respectively to the General Financial Rules, 1963, and subsidiary instructions and orders on the subject shall be followed;
- (b) in regard to contingent expenditure on each item specified in column 2 of the Annexure to Schedule V of these rules, orders, restrictions or scales specified in column 4 of that Annexure against that item shall be observed;
- (c) in regard to miscellaneous expenditure any rules, orders restrictions or scales as may be made, imposed or prescribed by the President shall be observed.

(5) Unless otherwise provided by any general or special rule or order, it shall be within the competence of an authority to exercise the financial powers delegated to an authority subordinate to it.

(6) The power delegated under these rules can also be exercised for a validation of an action already taken of expenditure or liability already incurred even when the authority validating the action or expenditure or liability, as the case may be, had no competence to do so at the time the action was taken or expenditure or liability was incurred."

23. Schedule-VII to the Financial Rules
ibid provides conditions in the exercise of powers to
write off irrecoverable loss vide O.M. dated
30.10.1976:-

"(2) Conditions for the exercise of
powers to write off irrecoverable loss
of stores- The exercise of powers in
regard to irrecoverable losses of stores
or public money should be subject to the
observance of the following conditions:-

- (a) The provisions of Note 1
below the heading in this
Schedule and other
relevant provisions of
General Financial Rules,
1963, should invariably be
observed.
- (b) Before the decision is
taken to write off a loss,
the Administrative
Ministry/Department, etc.,
should make a thorough and
searching investigation of
the case. The lessons
learnt therefrom should be
applied to prevent the
recurrence of such cases
in future.
- (c) A quarterly statement of
write off of losses should
be submitted to the
Associate/Integrated
Finance indicating the
reasons for the loss,
nature of the loss and the
remedial measures taken to
prevent the recurrence of
that type of loss.
- (d) If the Integrated/
Associate Finance finds
that the loss reveals some
basic defect in the rules
of procedure, the
amendment of which
requires orders of some
higher authority of this
Ministry as indicated in
condition (a) of Note 1
below the heading in this
Schedule, they should
bring the same to the

notice of the Establishment Division for further necessary action."

24. If one has regard to the above provisions, it is no more resintegra that every officer under the government has a personal responsibility for any loss sustained by the government through his negligence or otherwise. The same is recoverable as a penalty and also one is subjected to conduct of disciplinary proceedings. However, an exception to this rule is in Schedule-VII ibid where the powers have been given to the competent authority in consultation with the Finance to write off losses. The condition precedent for such an exercise provides that the loss does not disclose a defect any reflect in the rules and there has not been any serious negligence on part of any government servant which may call for disciplinary action by a higher authority. This has to be preceeded by a searching investigation.

25. Accordingly, once the loss incurred to the government is written of, it is conclusively established that the loss has not occurred due to serious negligence on part of any government servant associated or instrumental in such loss which could have called for disciplinary action.

26. In the above conspectus, the relevant issues for adjudication is whether the Director General's order dated 10.8.1994 writing off loss of

Rs. 11198/- due to the Council from Sh. Rup Ram on account of outstanding amount of advance of Rs.35000/- for making payment of TA/DA to the members for attending the meeting of ICAR in 1980 includes the loss incurred due to fault of the applicant attributed to him.

27. Applicant in this furtherance immediately after an order to write off losses had preferred a representation to the Secretary ICAR. This letter was taken cognizance by the Under Secretary (Vig.) as reflected by the record produced before us. A letter dated 11.11.1994 was addressed to the ICAR to clarify as to whether the written off amount includes an amount of Rs. 5000/- allegedly misappropriated by the applicant. No further material is available in the file produced before us to clarify the above issue.

28. To the applicant's specific pleadings taken in paras 4(xiv) & 4(xv) in the OA, respondents in response to denied the facts and stated that as the amount incurred towards Sh. Rup Ram does not say that it includes an amount of Rs.5000/-. Mere writing off cannot wipe of the misconduct of the applicant. This is a vague averment of the respondents with elaboration and production of credible evidence to support it.

29. From the perusal of the affidavit and other material on record, we find that the disbursement was done by Asha Ram, cashier and Sh. Rup Ram has been entrusted the entire amount. The aforesaid amount does include the amount as allegedly misappropriated by the applicant. If it is not so, Sh. Rup Ram would have been proceeded against rather examined as a witness against the applicant. As no negligence has been found in case of Sh. Rup Ram, he has not been indicated in any manner for government loss.

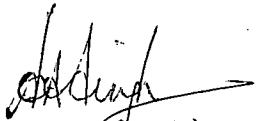
30. Having failed to rebut conclusively that the amount does not include Rs. 5000/-, the sine qua non for write off losses is that serious negligence has not been found not only on part of a particular person against whom the written off order has been made but also any government servant associated with the allegations constituting alleged misappropriation or loss to the government.

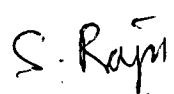
31. We are of the considered view that Schedule-VII and Rule 13 of the Rules ibid are statutory in nature mutatis mutandis apply to the ICAR also. Respondents cannot take resort to regulations or bye laws as being a civil servant and ICAR was notified under Section 14 of the Administrative Tribunals Act, 1985 is governed by Government of India instructions and rules. The above rule is not at all in conflict with the regulations and has to prevail.

32. Accordingly, having satisfied that the loss has been written of which includes the amount allegedly misappropriated by the applicant, no serious negligence can be found on the part of the applicant the disciplinary action resorted to is unwarranted.

33. On this ground alone, OA succeeds. Rest of the legal contentions raised are not adjudicated.

34. In the result, for the foregoing reasons, OA is allowed in terms of Para-8 of the OA. Impugned orders are quashed and set aside. Respondents are directed to implement the directions within a period of 3 months from the date of receipt of a copy of this order. No costs.


(S.A. Singh)
Member(A)


(Shanker Raju)
Member(J)