

Reserved**CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR****Original Application No.200/00697/2014**

Jabalpur, this Friday, the 17th day of January, 2020

**HON'BLE MR. NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE MR. RAMESH SINGH THAKUR, JUDICIAL MEMBER**

Sudesh Kumar Yadav, S/o Shri Manrakhan Yadav, aged about 51 years, Private Secretary (Compulsory retired), Regional Medical Research Centre for Tribals (ICMR) RMRC Complex, PO-Garha, Jabalpur (M.P.) 482003 **-Applicant**

(By Advocate – Shri Manish Verma)

V e r s u s

1. Union of India through the Secretary, Deptt. Of Health and Family Welfare Government of India, Nirman Bhavan, New Delhi – 110001.
2. Director General, Indian council of Medical Research, V. Ramalingaswamy Bhawan, Ansari Nagar, PB No.4911, New Delhi – 110029.
3. Director, Regional Medical Research centre for tribunals (ICMR), RMRC Complex, PO-Garha, Nagpur Road, Jabalpur – 482003.
4. Dr. Neeru Singh Director, Regional Medical Research centre for tribals (ICMR), RMRC Complex, PO-Garha, Nagpur Road, Jabalpur – 482003. **-Respondents**

(By Advocate – Shri Ashish Shrotri)

(Date of reserving order : 20.02.2019)

O R D E R

By Navin Tandon, AM.

The applicant is aggrieved by the penalty of “Compulsory Retirement” imposed on him.

2. The applicant has submitted the following in the Original Application:

2.1 He was appointed as Jr. Stenographer on 17.08.1987 and was further promoted as Sr. Stenographer on 29.12.1992. The post was redesignated as Personal Assistant on 19.12.1994.

2.2 He has completed 8 years service in the grade in 2000 and was eligible for the promotion to Private Secretary. However, he was promoted only on 30.12.2010.

2.3 He was harassed by respondent No.4 and, therefore, his wife wrote letters to higher authorities (colly. Annexure A/1).

2.4 Aggrieved by the delay in his promotion, he approached this Tribunal in OA 775/2011, which is still pending. The said O.A was filed on 29.08.2011, after which respondent No.4 issued a chargesheet dated 29.09.2011 (Annexure A-2) with malafide intention.

2.5 He submitted representations dated 14.10.2011 (Annexure A-4) and 06.02.2012 (Annexure A-3) for change of Disciplinary Authority which was not considered.

2.6 He had written the script and a book at his residence and not in office hours. Therefore, the entire allegation of using

office time and office infrastructure for writing personal book is vague.

2.7 Respondent No.4 bore a grudge against him and had issued several warning letters (colly. Annexure A-5).

2.8 He approached this Tribunal in OA 211 of 2012 for quashing the chargesheet and appointment of ad hoc Disciplinary Authority. The same was disposed of on 01.03.2012 (Annexure A-6) directing respondent No. 2 and 3 for appointment of Disciplinary Authority.

2.9 Though nothing could be proved in enquiry but in enquiry report (Annexure A-7), all the charges were found proved. He submitted his representation vide Annexure A-8.

2.10 However, nothing has been considered and by order dated 14.01.2013 (Annexure A-9), he has been compulsorily retired.

2.11 He submitted his appeal dated 22.01.2013 (Annexure A-10). The same has bee rejected in an arbitrary and mechanical manner on 12.08.2014 (Annexure A-11).

2.12 He filed review appeal which has been rejected on 08.11.2016 (Annexure A-13).

3. The applicant has prayed for the following reliefs:

“8. Relief Sought:

This Hon’ble Tribunal may kindly be pleased to:-

8.1 That this Hon’ble court may kindly be pleased to quash the order dtd.14.1.2013 (Annexure-A-9), 12.8.2014 (Annexure-A10) and Order dtd. 8.11.2016 (Annexure-A-11).

8.2 That this Hon’ble Court may kindly be pleased to further direct the respondents to reinstate the applicant with all consequential benefits.”

4. The respondents have filed their reply in which following

submissions have been made:

4.1 While the applicant was working as Private Secretary, it was found that the applicant has been engaged in personal work during office hours and has been using office computer and stationary for the same. A team was accordingly constituted consisting of 7 members to verify the unofficial documents, files in the room, table, almirah and official computer. The committee visited the applicant’s chamber on 5.9.2011 and while inspecting the files and folders on his computer, files containing huge number of pages running in thousands were prepared in official computer. Some files could be opened while the other could not because they were password protected. The committee requested the applicant to open those files/folders, however he refused to do so. The committee also found several letters fabricated on letter heads of various dignitaries

whereupon the applicant wrote letters promoting his own interest to important personalities viz. ministers, head of political parties.

4.2 Accordingly, chargesheet dated 29.09.2011 (Annexure A-2) was issued to the applicant. He denied all the charges by his letter dated 18.10.2011 (Annexure R-1). The Disciplinary Authority, therefore, decided to conduct the enquiry.

4.3 Initially, one Dr. Tapas Chakma, Scientist-F, was appointed as Enquiry Officer while Shri Gyan Chand, Scientist 'D' was appointed as Presenting Officer vide letter, dated 22.10.2011. However, at the applicant's request to change the enquiry officer, Shri Balwant Rai, Retd. Assistant Registrar, ICAR, was appointed as Enquiry Officer in place of Dr. Tapas Chakma vide order, dated 28.12.2011.

4.4 A full fledged departmental enquiry was conducted against the applicant wherein full opportunity of defense was given to him. The Presenting Officer submitted documents and also examined witnesses in support of allegations contained in chargesheet. The applicant also participated in the enquiry however, he does not lead defense evidence. The enquiry officer submitted his report to the Disciplinary Authority on 23.8.2012

(Annexure A/7) wherein he found all the charges proved against the applicant.

4.5 The enquiry report was forwarded to the applicant on 19.11.2012 (Annexure R-2). The applicant submitted his explanation on 14.12.2012 (Annexure R-3).

4.6 The Disciplinary Authority carefully considered the entire material available on record vis-à-vis the explanation submitted by the applicant. On due consideration, the Disciplinary Authority came to the conclusion that the allegations have been duly proved against the applicant. It was found that the acts of applicant are not in the interest of institution and the same amounts to gross indiscipline. Accordingly, punishment of compulsory retirement was imposed upon the applicant vide order, dated 14.1.2013 (Annexure A-9).

4.7 The Appellate Authority considered the appeal and granted personal hearing. After considering all the facts, the Appellate Authority passed a detailed order considering each and every point of the applicant, thereby rejecting the appeal (Annexure A-11).

4.8 Regarding delay in promotion of the applicant to the post of Private Secretary is concerned, the post fell vacant in 1994 and as per extant instructions stood lapsed when it remained vacant for more than one year. Permission to revive the post was received on 22.11.2010 and immediately thereafter the applicant was promoted on 30.12.2010.

4.9 As far as OA 775 of 2011 regarding delay in promotion to the post of Private Secretary is concerned, the respondents had filed appropriate reply. However, the applicant did not pursue the said case and consequently it was dismissed for want of prosecution on 24.05.2013. Therefore, it is incorrect on the part of the applicant to say that the said O.A is still pending.

4.10 The applicant has not stated the reasons for which respondent no.4 was biased against him.

4.11 It is denied that due to filing of O.A 775 of 2011 on 29.08.2011 before this Tribunal, the chargesheet has been issued on 29.09.2011.

4.12 No ground for change of Disciplinary Authority was made out and accordingly the request of the applicant was not accepted.

4.13 At the request of the applicant, it was decided to change the Enquiry Officer.

4.14 The applicant was given full opportunity to defend himself during the enquiry. After completion of the enquiry, the Enquiry Officer has concluded that all charges are proved.

5. The applicant has filed rejoinder in which he has raised the point that no eye witness was produced to prove that the applicant was misusing office time and infrastructure for personal work.

6. Heard the arguments of learned counsel of both the parties and perused the pleadings available on record.

7. Learned counsel for the applicant submitted that the applicant had written a book which received lot of appreciation. This was not liked by the powers that be of respondent department. Further, applicant's wife wrote to higher ups against the Director. This was the basic reason for issue of chargesheet.

7.1 The charge is of using office time and infrastructure to promote own trade. However, it was not proved conclusively.

7.2 Further, the penalty imposed is too harsh.

8. Learned counsel for the respondents submitted that allegation of malafide against respondent No.4 is baseless. The entire disciplinary proceedings have been carried out as per rule/law.

9. The role of Courts/Tribunals in case of disciplinary proceedings have been clearly defined in a plethora of judgments of Hon'ble Supreme Court. In the matters of **B.C. Chaturvedi Vs. Union of India**, (1995) 6 SCC 749 : 1996 SCC (L&S) 80, the Hon'ble Apex Court has held that:

“(12). Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power, and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceedings. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. When the authority accepts the evidence and the conclusion receives supports therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to re-appreciate the evidence or the nature of punishment. The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate

the evidence and to arrive at its own independent findings on the evidence.....”

*(13). The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has co-extensive power to re-appreciate the evidence or the nature of punishment. In disciplinary inquiry the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In *Union of India v. H.C. Goel* (1964) 4 SCR 718: AIR 1964 SC 364, this Court held at page 728 (of SCR): (at p 369 of AIR), that if the conclusion, upon consideration of the evidence, reached by the disciplinary authority is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued.*

(emphasis supplied)

10. In the present case, the chargesheet was issued by the competent authority. Nomination of Enquiry Officer and Presenting Officer was done as per procedure. The request of the applicant was agreed to and the Enquiry Officer was changed. Enquiry was conducted as per provision. The applicant participated in the enquiry proceedings. He was given the opportunity of nominating his defence assistant, which was not availed of. The enquiry report has concluded that all the four articles of charges are proved.

11. Disciplinary Authority has considered the enquiry report and forwarded it to the applicant. The applicant has submitted his representation. After considering the same, the Disciplinary Authority has passed the orders for imposition of penalty of

“Compulsory Retirement”. We find that Disciplinary Authority has given detailed reasons for each article of charge.

12. Similarly, Appellate Authority has passed a very detailed order while rejecting the appeal. Personal hearing was also granted to the applicant.

13. The applicant has failed to demonstrate any breach of law or he not getting any opportunity to defend himself.

14. We do not find any illegality or irregularity in the action of the respondents.

15. Accordingly, the Original Application is dismissed. No costs.

(Ramesh Singh Thakur)
Judicial Member

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(Navin Tandon)
Administrative Member