

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No-3428/2015

New Delhi, this the 29th day of January, 2020



Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. A.K. Bishnoi, Member (A)

Dr. Bela Shah
D/o Dr. S.M. Shah, age 61 years
R/o C-4/186, Sector 36,
Noida 201303, UP. ... Applicant

(through Sh. S.D. Singh)

Versus

1. Indian Council of Medical Research
Through its Authorized Signatory
V. Ramalingaswamy Bhawan
Ansari Nagar, Post Box 4911, New Delhi-110029.
2. Director General
Indian Council of Medical Research
V. Ramalingaswamy Bhawan
Ansari Nagar, Post Box 4911, New Delhi-110029.
3. Mr. P.S. Jawahar
Sr. Deputy Director General (A)
And Chief Vigilance Officer
Indian Council of Medical Research
V. Ramalingaswamy Bhawan
Ansari Nagar, Post Box 4911
New Delhi-110029. ... Respondents

(through Sh. Raju Dudani)

ORDER(ORAL)**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman**

The applicant was working as the Head of Non-Communicable Diseases Division of Indian Council of Medical Research (ICMR) Headquarters, a wing of Ministry of Health and Family Welfare, between August 2006 and November, 2008. A charge memo was issued to her on 30.04.2015. It was alleged that in her capacity as Head of the department, she approved a note submitted to her, for transfer of Plot No. 119, Sector 35, Noida, admeasuring 9712.62 sq. m., in favour of ICMR, to ICPO-ICMR Cooperative Group Housing Society. Another allegation was that, she did not raise any objection when the issue was being discussed at the Governing Body meeting. Thirdly, it was alleged that she approved a note for acceptance of a cheque for Rs. 1,40,66,049/- towards part of the consideration. The fourth allegation was that, even though she was a member of ICPO, ICMR Housing Society, she did not recuse herself in the decision making process, at any stage. This OA is filed challenging the charge memo dated 30.04.2015.

2. The applicant contends that she has only approved a note submitted by the lower official, and the ultimate decision was taken by the executive company of the organisation. She contends that the issue is a stale one, and it was dug up only to cause prejudice to her. The applicant further submits that, the charge memo was issued without the approval of the disciplinary authority (DA).



3. The respondents filed a detailed counter affidavit. It is stated that the allegations made against the applicant, in the charge memo are serious in nature and the truth or otherwise, can be gone into only in the disciplinary inquiry. It is stated that the charge memo was issued with the approval of the Director General of the organization and the applicant herself was aware of that. Other contentions urged by the applicant are also denied.

4. The allegations made against the applicant in the charge memo, read as under:

ARTICLE-I

“Dr. Bela Shah, Scientist ‘G’, Indian Council of Medical Research (ICMR), while discharging her duties as Head, NCD (Non-Communicable Disease) Division, ICMR Headquarters, during the period from August, 2006 to November, 2008 approved on 13-08-2006, a draft note for the Executive Committee of ICMR prepared by Shri A.K. Srivastava, Executive Engineer, ICMR Headquarters, leading to the approval of the Executive Committee for the unauthorised transfer of Plot No.119, Sector-35, NOIDA, admeasuring 9712.62 sq.mtrs. originally allotted to the ICMR by the NOIDA for construction of staff quarters, to ICPO-ICMR Cooperative Group Housing Society, a private housing society consisting of members working in ICMR, etc. (hereinafter called ‘ICPO-ICMR CHGS’)

By her acts of omission and commission as aforesaid, Dr. Bela Shah, Scientist ‘G’, ICMR, has failed to maintain absolute integrity and acted in a manner unbecoming of a public servant/officer of the ICMR thereby violating Rules 3(1) (i) and 3(1)(iii) of the CCS (Conduct) Rules, 1964.

ARTICLE-II

Dr. Bela Shah, as a member of the Governing Body of ICMR, did not raise any objection during the Governing Body meeting on 24/10/2007 when Agenda Item No.8(i) related to taking note of and ratifying the Minutes of the meeting of the Executive Committee held on 15/09/2006 containing the item related to the approval of the Executive Committee of ICMR for

unauthorised transfer of the said Plot No.119, Sector-35, NOIDA, admeasuring 9712.62 Sq.Mtrs. originally allotted to ICMR by the NOIDA for construction of staff quarters, to ICPO-ICMR, a private Housing Society consisting of members working in ICMR etc. came up for discussion.

By her above acts of omission and commission, Dr. Bela Shah, Scientist 'G', ICMR, has failed to maintain absolute integrity and acted in a manner unbecoming of a public servant/officer of the ICMR thereby violating Rules 3(1)(i) and 3(1)(iii) of the CCS (Conduct) Rules, 1964.



ARTICLE-III

Dr. Bela Shah approved on 06.11.2008, a proposal put up to her by the said Shri A.K. Srivastava, Executive Engineer, ICMR for according approval to the request of the Institute of Cytology and Preventive Oncology (ICPO), Sector-39, NOIDA, for acceptance of a cheque bearing No. 507690 dated 03.11.2008 for Rs. 1,40,66,049 drawn in favour of DG, ICMR on account of last instalment towards the total cost of Rs. 4,33,90,337/- for transfer of Plot No. 119, Sector-35, NOIDA, admeasuring 9712.62 Sq. Mtrs. Originally allotted to ICMR by the NOIDA for construction of staff quarters, to ICPO-ICMR Cooperative Group Housing Society (hereinafter called 'ICPO-ICMR CGHS') and recommended the same for approval of the Director General, ICMR, thereby repeatedly failed to detect false and misleading information and irregularities contained in the file with the ulterior object to obtain undue pecuniary advantage for herself and other and causing loss to the public exchequer.

By her above acts of omission and commission, Dr. Bela Shah, Scientist "G", ICMR, has failed to maintain absolute integrity and acted in a manner unbecoming of a public servant/officer of the ICMR thereby violating Rules 3(1)(i) and 3(1)(iii) of the CCS (Conduct) Rules, 1964.

ARTICLE-IV

Dr. Bela Shah, concealed the fact that she was a member of the ICPO-ICMR CGHS and chose not to recuse herself from the decision making process at any stage when the said plot of land was illegally transferred to ICPO-ICMR, thus causing pecuniary loss of Rs.22.82 crore to the public exchequer and unlawful gain to herself.

By her above acts of omission and commission, Dr. Bela Shah, Scientist "G", ICMR, has failed to maintain absolute integrity and acted in a manner unbecoming of a public

servant/officer of the ICMR thereby violating Rules 3(1)(i) and 3(1)(iii) of the CCS (Conduct) Rules, 1964.”



5. The charges, indeed, are very serious in nature. However, the truth or otherwise thereof, needs to be examined only in the inquiry. One of the contentions raised by the applicant is that, the charge memo was issued by an authority, not vested with the power to do so. It is true, that the charge memo is signed by Senior Deputy Director General (A) and Chief Vigilance Officer. Fact, however, remains that in Para 7, it is mentioned as under:

“This issues with the approval of the Secretary, H&FW/DHR & DG, ICMR.”

6. The respondents have placed before us, an Appendix to the Service Rules dealing with the powers conferred with the Director General. Heading of the Appendix reads as under:

“Schedule of powers vested in the Director General, Indian Council of Medical Research”

7. As regards the initiation of disciplinary proceedings, etc., the extent of power conferred upon the Director General, is as under:

XIV Appointment, Termination of Appointment		
73	Making appointment to posts under ICMR	(a) Full powers to make appointments to posts in Group ‘A’, the maximum of the Grade pay of which does not exceed Rs. 10,000/p.m., subject to



		selection being made by a duly constituted Selection Committee. (b) Full powers in respect of Group B and C posts.
74	Dispensing with a medical certificate of fitness before appointment to ICMR service in individual cases As per FR	Full powers.
75	Suspending a lien. As per FR	Full powers.
76	Transferring alien. As per FR	Full powers.
77	Transferring a ICMR employee from one post to another.	Full powers.
78	i) Accepting the resignation of a ICMR employee. ii) Permitting withdrawal of resignation. As per FR	Full powers.
79	Sanctioning an officiating promotion in a short term vacancy. Ministry of Finance O.M. F. 10(20)E (Coord.)/71 dated 18.11.1971.	Full powers to fill a vacancy, the duration of which exceeds 5 days.
80	Appointing ICMR employee to officiate in more than one post and fixing- (a) his pay in subsidiary posts; and (b) the amount of compensatory allowance to be drawn by him.	Full powers.
81	i) Retiring ICMR employee in the public interest after he has attained the age of 50 years or 55 years as the case may be. ii) Withholding	i) Full powers in respect of employees holding posts to which he can make substantive appointment. ii) Full powers in



	permission to ICMR employee under suspension who seeks to retire. As per FR	respect of employees holding posts to which he can make substantive appointment.
82	Retaining ICMR Scientist in service after the age of 62 years	Full powers provided the Scientists are recommended for re-employment beyond 62 years and approved by MOH&FW limited to a period of one year at a time and upto the age of 65 years.
83	To declare a ICMR employee to be a ministerial employee.	Full powers as per instructions issued by DOPT from time to time.
84	To relax the normal procedure of recruitment through the employment exchange for direct appointment to posts and services. As per FR	Full powers to dispense with the procedure of recruitment to Group C posts through the employment exchange where: i) a near relation of a deceased employee is to be employed, as a measure of immediate assistance to the family, or ii) a temporary employee is to be reappointed to a post, as he failed to resume duty at the end of the maximum period of Extra-ordinary Leave admissible to him and hence ceased to be in service. iii) a retrenched employee of ICMR is to be appointed.

8. He is conferred with the powers of appointment and termination of appointment, for all the posts under ICMR. Another important aspect is that, after receiving the charge memo, the applicant addressed letter dated 16.05.2015, to the Director General. She wanted to impress upon him, that the charge memo was issued by an Inquiry Officer, though the Director General happens to be the DA. The first page of the letter reads as under:



“1. I am constrained to approach you as my disciplinary authority, on whose behalf the Sr. Dy DG & CVO, ICMR, has issued the impugned charge-sheet Memo., without authorization as valid in law. It is most respectfully and humbly submitted that the charge-sheet Memo. No. Vig./02/208(pt.VI) dated 27/30.04.2015 (copy at Annex-I) issued to the undersigned by the Senior Dy. Director General (A) & Chief Vigilance Officer under his own signatures, with the approval of the Secretary, H&FW & DG, ICMR, is illegal and invalid in law, on the following grounds:-

(i) That Sr. Dy. Director General (A) & CVO, ICMR, who has signed and issued the aforesaid charge-sheet Memo. To me, is not my disciplinary authority in accordance with the provisions of the Schedule, annexed to the Bylaws Governing the Conditions of the Service of the Employees of the Indian Council of Medical Research. The authorities, which are concerned or have locus standi in the matter of any disciplinary action against me, as per the said Schedule are as under:-“

9. From this, it is evident that, the applicant was very much aware that, the Director General is the DA. Therefore, it is not open to her to contend that the charge memo was issued without the approval of the DA.

10. Though, extensive arguments are advanced, touching on the merits, we do not intend to deal with the same. In fact, any discussion on the charges in the OA, may not be in the interest of the applicant herself.

Therefore, we do not express any view on the contents of the charges. We leave it open to the applicant to urge all factual and legal contentions before the DA.

11. We, therefore, dismiss the OA. The interim stay shall stand vacated. There shall be no order as to costs.



(A.K. Bishnoi)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/ns/