

Central Administrative Tribunal
Principal Bench, New Delhi

Regn. No. OA-1163/87

Date: 20.10.1989

Dr. A.T. Dudani Applicant

Versus

The President, Respondents
Indian Council of
Agricultural Research
and Another

For the Applicant Shri B.A. Mahanti, Advocate

For the Respondents Shri A.K. Sikri, Advocate

CORAM: Hon'ble Shri P.K. Kartha, Vice-Chairman (Judl.)
Hon'ble Shri P.C. Jain, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*

(Judgement of the Bench delivered by Hon'ble
Shri P.K. Kartha, Vice-Chairman)

Dr. A.T. Dudani, while working as Scientist in Grade S-4 in the I.C.A.R., New Delhi, filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for quashing the impugned order dated 5.7.1982, whereby the President of the I.C.A.R. imposed on him the penalty of compulsory retirement from service. The application was filed in the Tribunal on 11.8.1987. The applicant has also filed an M.P. for condonation of delay in filing the application. On 11.8.1988, the application was admitted, leaving the question of condonation of delay open.

2. The case of the applicant, in short, is that he is a highly qualified Scientist having specialised in Dairy Science and is recognised as one of the leaders

in his field not only in India but also abroad. He began his career as a Scientist in the Central Drug Research Institute at Lucknow. Thereafter, he moved to the Central Research Institute at Kasauli as its Assistant Director. In 1959, he was selected by the U.P.S.C. and appointed as Dairy Bacteriologist at the National Dairy Research Institute, Karnal. He was sent to the National Dairy Development Board on deputation as Director of Management and Manpower in 1970. From there, after approximately one year, he was posted as Regional Manager, Indian Dairy Corporation, New Delhi. From January, 1973 till the end of 1974, he served as Food Microbiologist with the Food and Agricultural Organisation of the United Nations at Lusaka in Zambia. On the termination of his foreign assignment, he joined the Indian Dairy Corporation as Head of Projects Division in 1975. In 1976, he was sent on deputation as Project Administrator and General Manager, Mother Dairy, New Delhi. In 1977, he joined as Additional Animal Husbandry Commissioner in the Ministry of Agriculture.

3. During the period 1970-73 and 1975-77, when the applicant was working on deputation with the National Dairy Development Board at Anand in the State of Gujarat, Dr. Kurien was the Chairman of the said Board.

4. According to the applicant, while working as Additional Animal Husbandry Commissioner, he had to deal with the examination of a project submitted by Dr. Kurien. He raised certain queries about the feasibility of the project. This led to Dr. Kurien writing a letter dated 1.5.1978 to the then Cabinet

Secretary, wherein he had referred to the unhelpful attitude of the officials of the Department of Agriculture and had even suggested that some radical surgery was required to remedy the situation.

5. On 21.8.1980, the Secretary of the I.C.A.R. served a memorandum on the applicant wherein it was alleged that while ~~he~~ ^{was} working as Additional Animal Husbandry Commissioner in the Ministry of Agriculture, a cyclostyled copy of a confidential letter dated 1st May, 1978 addressed by Dr. Kurien, Chairman of the National Dairy Development Board to the Cabinet Secretary with a copy to Secretary (A&RD) was handed over personally by him to Shri Motibhai Chaudhari, Member of Parliament. It was alleged that as getting such a confidential document cyclostyled and giving to an unauthorised person constitutes a serious act of misconduct and violation of the Government Servants Conduct Rules, Director General, I.C.A.R. desires that ~~he~~ ^{One} should explain as to why disciplinary action should not be taken against him for this act. The applicant submitted his explanation on 12.9.1978. On 24.11.1979, the President of the ICAR, after considering the representation submitted by the applicant, found that ~~he~~ ^{One} had violated Rules 11 and 20 of the C.C.S. (Conduct) Rules, 1964 as extended to I.C.A.R. and imposed the penalty of censure on ~~him~~ ^{vi}.

6. Against the aforesaid order of punishment, the applicant made a representation on 15.1.1980. In the said representation, the applicant had, inter alia, contended that the penalty of censure was imposed on

or

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him without holding an inquiry which was mandatory. He submitted that he had been deprived of a reasonable opportunity. He, therefore, requested that the same should be formally set aside and that it should not be taken cognizance of for any purpose whatsoever. He prayed that the matter may, thereafter, be treated as closed.

7. After considering the aforesaid representation, on 18.3.80, the President of the I.C.A.R. decided that a fresh inquiry should be held under the provisions of C.C.S. (C.C.A.) Rules, 1965 against the applicant on the allegations which led to the imposition of penalty of censure on him. Accordingly, he set aside the order imposing the penalty of censure and directed that de novo inquiry, in accordance with the prescribed procedure, may be held against the applicant on the allegations which led to the imposition of penalty of censure on him.

8. On 10.7.1980, a memorandum together with the statement of Article of Charge, a statement of imputations of misconduct or misbehaviour in support of Article of Charge, a list of documents on which the Article of Charge framed against the applicant were proposed to be sustained and a list of witnesses, was served on the applicant. After holding an inquiry, in accordance with the provisions of the C.C.S. (CCA) Rules, 1965, the President of I.C.A.R. passed the impugned order dated 5.7.1982 whereby the penalty of compulsory retirement was imposed on the applicant. By a separate office order dated 5.7.1982, the

Secretary, I.C.A.R., notified that the applicant stood retired from service w.e.f. the forenoon of that date.

9. The applicant sent a representation to the President of I.C.A.R. on 7.7.1982 against the impugned order dated 5.7.1982. In the representation, he has referred to his earlier letter dated 10.5.1982 wherein he had sought for the concurrence of the President of I.C.A.R. to his seeking voluntary retirement. He also submitted that the impugned order of compulsory retirement was bad and illegal as it was based on the same set of facts which led to the imposition of the punishment of censure earlier. The higher punishment has been inflicted on the applicant for representing against the imposition of the punishment of censure. The validity and illegality of the de novo inquiry have been highlighted by him in his subsequent representations addressed to the Minister for Agriculture and President, I.C.A.R. on 6.9.1982 and 27.1.1984 and letters dated 12.7.1986 and 23.1.1987 addressed to the Minister of State for Personnel, Public Grievances and Pension. His representation dated 7.7.1982 was rejected by the President, I.C.A.R. on 31.7.1982. With reference to his representation dated 27.1.1984, the respondents informed him that his earlier representation had been rejected and that no new facts had been brought out by him to reconsider the matter.

10. The case of the respondents is that the application is liable to be dismissed on the ground that it is barred by limitation. They have contended that there was no legal infirmity in the impugned order of punishment. They have also opposed the prayer for condoning the delay in filing the application.

11. We have carefully gone through the records of the case and have heard the learned counsel for both the parties. The general principle of law applicable ~~in the absence of any rule to the contrary~~ is that "an Appellate Authority in an appeal by an aggrieved party may either dismiss his appeal or allow it either wholly or partly and uphold or set aside or modify the order challenged in such appeal. It cannot surely impose on such an appellant a higher penalty and condemn him to a position worse than the one he would be in if he had not hazarded to file an appeal" (vide decision of the Constitution Bench of the Supreme Court in Makeshwar Nath Srivastava Vs. State of Bihar, 1971 (1) S.C.C. 662 at 667). The position is, however, different when there are rules to the contrary.

12. Under Rule 29 of the C.C.S.(CCA) Rules, 1965, the President can review his own orders passed by him at any time, either on his own motion or otherwise. He may (a) confirm, modify or set aside the order, or (b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed, or (c) remit the case to the authority which made the order or to any other authority directing such authority to make such further inquiry as it may consider proper in the circumstances of the case; or (d) pass such other orders as he may deem fit. The only procedural requirement is that an order imposing or enhancing any penalty shall not be made unless the Government servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed and where it is proposed to impose a

major penalty, specified in Rule 11, an inquiry under Rule 14 shall be held.

13. In the instant case, there was nothing illegal in holding an inquiry under Rule 14 of the C.C.S. (CCA) Rules, 1965 on the receipt of the representation dated 15.1.1980 submitted by the applicant.

14. The report of the Inquiry Officer dated 17.6.1982 clearly indicates that the charge levelled against the applicant in regard to the cyclostyling and handing over ~~to~~ Shri Motibhai, Member of Parliament, of the copy of the letter dated 1.5.1978 from Dr. Kurien addressed to the Cabinet Secretary, stands proved. The only question for consideration is whether the imposition of the penalty of compulsory retirement is disproportionate to the gravity of the misconduct. In a case where there is some evidence to sustain the charge, this Tribunal has no discretion or power to award lesser punishment, as has been observed by the Supreme Court in Union of India Vs. Parma Nanda, 1989 (1) SCALE 606.

15. The applicant cannot also succeed in the present proceedings on the ground that the application is barred by limitation in view of the provisions of Section 21 of the Administrative Tribunals Act. His representation addressed to the President, I.C.A.R. on 7.7.1982 was rejected on 31.7.1982. His repeated representations, thereafter will not have the effect of enlarging the period of limitation. We are not impressed by the plea raised by him that he filed the present application in the Tribunal in time after the jurisdiction of the Tribunal was extended to I.C.A.R. by Gazette notification dated 20.5.1987. Nothing prevented the applicant from

seeking redress in a court of law from 31.7.1982, when his first representation was rejected till the jurisdiction of the Tribunal was extended to I.C.A.R. in May, 1987. The reasons given in the application for condonation of delay are not convincing. In the recent decision of the Seven-Member Bench of the Supreme Court in S.S. Rathore Vs. State of Madhya Pradesh, A.T.R. 1989(2) S.C. 335 at 340-341, it has been observed that the cause of action first arises when the remedies available to the public servant under the relevant service rules as to redressal are disposed of and that repeated unsuccessful representations would not have the effect of enlarging the period of limitation. The applicant should have moved the competent court within a period of three years after his representation was rejected on 31.7.1982 in view of the provisions of Article 58 of the Limitation Act, 1963 which would have been applicable to such cases.

16. The matter can also be viewed from another angle. The grievance of the applicant arose when the respondents passed their impugned order dated 5.7.1982, whereby the penalty of compulsory retirement was imposed on him. The Administrative Tribunal has no jurisdiction to adjudicate upon a grievance which arose prior to 1.11.1982. This is clear from the provisions of Section 21 of the Administrative Tribunals Act. In such a case, the Tribunal is not competent to condone the delay.

17. In the facts and circumstances of the case, we see no merit in the present application and the same is dismissed. The parties will bear their own costs.

Dec-29/10/89
(P.C. Jain)
Administrative Member

Review
20/10/89
(P.K. Kartha)
Vice-Chairman (Judl.)